IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 570 OF 2005
IN
SUMMARY SUIT NO. 606 OF 2004

M/s. Bhayander Estates Pvt. Ltd. ... Plaintiff.

V/s.

M/s. Cobit Engineering Pvt. Ltd. ... Defendant.

Mr. K.V. Tembe for the Plaintiff.
Mr. S.B. Prabhawalkar with Ms. Deepa Juvekar for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

20TH JUNE 2007.

P.C. :-

. The Summons for Judgment is taken out in the suit under Order 37 of the Code of Civil Procedure, 1908.

2. Three partnership firms (i) Cobit Engineering, (ii) Inter Link Engineering and (iii) Cobit-Scaff had, prior to 1st April 1997, borrowed amounts respectively of Rs.1,00,000/-, Rs.2,00,000/- and Rs.8,00,000/- from the Plaintiff, repayable with interest at 18% per annum. It has been averred in the plaint that the directors and share-holders of the Defendants are partners of the three firms and it is not disputed in

the submission of the Defendant before the Court that the partners of the firms and the directors of the Defendant, which is a private limited company, are common.

3. According to the Plaintiff, an agreement was arrived at in March 1997 under which with effect from 1st April 1997, the amount of Rs.11.00 lakhs due and outstanding from the partnership firms stood transferred to the Defendants. Three letters dated 1st April 1997 were received from the three firms by the Plaintiff. With effect from 1st April 1997, the Defendant paid to the Plaintiff quarterly interest calculated at the rate of 18% per annum on the loan amount of Rs.11.00 lakhs. The Defendant deducted tax at source and paid over to the Plaintiff the net quarterly interest. T.D.S. Certificates were handed over to the Plaintiff, the last two by a forwarding letter dated 22nd December 2001. The Defendant also issued a cheque on 13th June 2002, in the amount of Rs.1,00,000/- drawn on the Saraswat Co-operative Bank Ltd. which was encashed by the Plaintiff towards the payment of quarterly interest for the period up to 30th June 2001.

4. Notices of demand were addressed by the Plaintiff on 22nd August 2002 and 6th January 2003. In the reply addressed on behalf of the Defendant on 29th January 2003, the material aspects of the transaction between the Plaintiff and the Defendant have not been disputed. In particular, no dispute has been raised in regard to : (i) The principal transaction of Rs.11.00 lakhs and the transfer of the outstanding liability from the accounts of the partnership firms to the Defendant; (ii) The deduction of tax at source; and (iii) The payment of interest by the Defendant to the Plaintiff at the rate of 18% per annum. The only defence in the reply dated 29th January 2003 was that : (i) Parties have agreed to a moratorium on further interest on the loan and the Defendant had agreed to repay the principal amount of Rs.11.00 lakhs, in pursuance whereof a cheque of Rs.1.00 lakh was sent to the Plaintiff; (ii) The Defendant had paid interest at a very high rate and (iii) In view of the market conditions, the demand of interest at the rate of 18% was unjustified.

5. An affidavit in reply has been filed to the Summons for Judgment. The material aspects of the transaction have not been denied. At the hearing of the Summons for Judgment it has been urged on behalf of

the Defendant that there is no written contract between the Defendant and the Plaintiff. An effort was faintly made to urge that the Advocate's letter dated 29th January 2003 was addressed on the instructions of an employee who left service. Finally, learned Counsel submitted that there is no agreement for interest at the rate of 18% per annum.

6. Having heard learned Counsel for the contesting parties and upon perusing the record, it is abundantly clear that the Defendant has not disputed (i) The liability to repay an outstanding amount of Rs.11.00 lakhs; (ii) The fact that the Plaintiff had advanced a loan of Rs.11.00 lakhs to three partnership firms; (iii) That the liability was transferred to the account of the Defendant; (iv) That the Defendant had in pursuance of the transaction paid interest computed at the rate of 18% per annum and (v) T.D.S. Certificates were issued by the Defendant to the Plaintiff. This position has not fairly been disputed either in the replies or in the submissions before the Court. The T.D.S. Certificate dated 18th October 2001 specifically provides that it is on account of the payment of interest. The reply by the Defendant's Advocates dated 29th January 2003 fairly accepts the liability to pay an outstanding amount of Rs.11.00

lakhs. The only remaining defence is that the parties agreed to a moratorium on the payment of interest. This is contrary to the Defendants' case that the continuance of a rate of interest at **18%** was not justified having regard to the market conditions.

7. In these circumstances, it is evident that there was a written contract between the parties under which the Defendant assumed liability to pay the outstanding dues of Rs.11.00 lakhs to the Plaintiff. A written contract, it is well settled, can be found to exist on the basis of documentary material on the record. That is so in the present case. In so far as liability to pay interest is concerned, the Defendant has not disputed that interest was paid to the Plaintiff computed at the rate of 18% per annum. The fact that the Defendant sought a reduction of the rate in view of a change in the market condition would show that interest, as claimed by the Plaintiff, had in fact been paid by the Defendant.

8. In the circumstances, I am of the view that there is no valid defence to the claim made on behalf of the Plaintiff in the Summary Suit. However, having regard to the interests of justice and with a view to granting an opportunity to the Defendant to defend the

suit, it would be appropriate and proper if leave is granted to the Defendant to defend the suit subject to a deposit of Rs.11.00 lakhs. The amount of deposit shall be effected within a period of 12 weeks. The Defendant shall file a written statement within 6 weeks from the date of deposit. Upon deposit, the Plaintiff would be at liberty to withdraw an amount of Rs.10.00 lakhs subject to furnishing a bank guarantee of a nationalised bank to be kept alive during the pendency of suit. The balance of the amount of Rs.1.00 lakh (which according to the Defendant was paid towards the principal outstanding) shall be invested in a fixed deposit of a nationalised bank to be renewed periodically during the pendency of the suit.

9. The Summons for Judgment is accordingly disposed of.